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FEDERAL COMMUNICATIONS COMMISSION
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

**In the Matter of
Implementation of Section 26 of
the Cable Television Consumer
Protection and Competition Act
of 1992**

Inquiry into Sports Programming Migration

PP Docket No. 93-21

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FEDERAL COMMUNICATIONS COMMISSION
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**COMMENTS TO FURTHER NOTICE OF INQUIRY
BY THE
ASSOCIATION OF INDEPENDENT
TELEVISION STATIONS, INC.**

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Executive Summary

INTV believes the Commission and the Congress should continue to play an active role in the issue of sports siphoning. We disagree with the FCC's Interim Report to the extent that it concluded that sports siphoning was not a major problem. INTV is especially concerned with siphoning as it relates to regular season coverage of Major League Baseball and college football by local television stations.

The FCC's analysis, that increases in games available on cable sports channels does not, in and of itself, evidence sports siphoning is incorrect. Such an approach presumes that cable sports channels and local television stations do not compete for sports rights. This is simply not the case. Increases of games on cable sports channels does provide some indication that sports are moving away from local, over-the-air television.

Major League Baseball's contract with ESPN is nothing more than a preclusive contract. It is an attempt to prohibit head to head competition with local over-the-air broadcasts. The contract artificially restricts local coverage. ESPN will cablecast two games on Wednesday nights and one game on Sunday nights. On Wednesdays, no local television station may broadcast a game, even though ESPN is not covering the game in question. The contract discriminates against local television stations, because it does allow regional cable sports channels to cablecast competing games on Wednesday nights.

Major League Baseball's new contract with ABC and NBC does provide increased coverage of games on local television stations. However, instead of a national game of the week, the new contract takes away one night per week from local stations during the second half of the season. When combined with ESPN's ability to prevent local broadcasts on two nights, the new network arrangement, which takes away another night, makes it difficult for local stations to contract with local teams for games. In the long run, these agreements may undermine the value of a local television station's contract with its local team.

College football is leaving local off-air television because of preclusive contracts. Both the courts and the FTC's Bureau of Competition consider these arrangements an uneconomic restraint on the supply of televised games. Long term data from the San Francisco, Tucson and Minneapolis markets confirm that the number of college football games on local off-air television has declined.

The HBO case does not prevent the FCC or Congress from enacting new sports siphoning rules. The HBO case was decided at a time when cable was in its infancy. Today, cable is a major player for sports rights. Given the change in the economics of cable and broadcasting, sports siphoning rules are clearly warranted.

INTV believes the FCC should recommend to Congress that the Commission retain authority to study and enact sports siphoning rules. INTV believes the Commission should find that preclusive contracts are inconsistent with the fundamental policies contained in the Communications Act.

The Commission and the Congress should continue to play an active role in the issue of sports migration. INTV believes that the FCC's Interim Report was a fairly good beginning. Nevertheless, INTV disagrees with the Report's overall conclusion that the migration of sporting events away from over-the-air television is not an extensive problem. Migration is occurring, especially in the areas of professional baseball and college football. The Commission has the authority, indeed the obligation, to recommend to Congress and/or to enact specific rules which will prevent further migration of sports away from free television.

I. THE DEFINITION OF MIGRATION SHOULD BE REVISED

INTV believes the Commission's approach to measuring sports migration leads to an inaccurate picture of existing migration trends. The Interim Report defined sports migration as, "the movement of sports programming from broadcast television to a subscription medium (*i.e.* one for which viewers pay a fee.)" It observed that an increase in the number of games exhibited over subscription media would not, in and of itself, constitute migration.¹ This approach is based on the assumption that it is too difficult to posit what the projected number of games on free off-air television would be in the absence of non-broadcast distributors. We do not agree.

¹Further Notice of Inquiry in PP Docket No. 93-21, FCC 94-65 (released March 11, 1994) at 2. ("Further Notice")

The Commission goes too far in dismissing this concept in its sports migration analysis. The approach creates a definitional presumption that migration is not occurring. While the FCC is not willing to consider an increase in games on cable sports channels as *per se* evidence of migration, it is willing to consider statistics regarding the number of exhibitions on broadcast television stations as *per se* evidence that migration is not occurring. The Commission cannot have it both ways.

Certainly, it is a legitimate question to ask whether there would be increased coverage of certain sports on free off-air television in the absence of pay subscription channels. Indeed, for those sports where broadcasting and cable compete for sports rights, one may safely presume that increases on games of cable sports channels detract from the number of broadcast exhibitions.

The FCC's current approach ignores the fact that in many instances off-air television stations are competing head to head with pay cable sports interests. The Commission's conclusion withstands critical analysis only if one believes that cable and broadcast stations are negotiating for different games or a different package of rights. While this may be true for some sports, such as lacrosse or volleyball, it is certainly not true for several major sports. As the examples detailed below clearly indicate, there is direct competition for sports rights. For most major sporting events, local television broadcasters and pay cable interests are competing to telecast the same games.

A presumption, that an increase of games on cable sports channels decreases the number of broadcast exhibitions, is further justified based on a comparison of the economics of television and cable.

There is no doubt that pay cable sports channels have increased spending for a variety of sporting events in the last ten years. Many of the events seen on pay cable sports channels involve sports, such a major league baseball and college football, that traditionally have been carried by over-the-air television broadcasters. Indeed, sports expenditures for cable services will continue to grow in the future. This growth will be fed by a cable sports network's ability to tap two sources of revenue: 1) fees paid by cable operators to the sports channel (which in turn are passed on to cable subscribers), and 2) advertising revenue. Indeed, these cable services are competing head to head for sports rights with off-air television broadcasters.

When competing for sports rights, off-air television broadcasters are limited to a single revenue source -- advertising. As the broadcast industry's experience with retransmission consent demonstrates, fees from cable operators will not be a reliable source of revenue in the future.

Given the natural economic limitations on bidding for sports rights, it is no wonder that cable sports channels are able to outbid local television stations for sports rights. This is especially true given the ever increasing license fees for sporting events.

Pay cable sports interests argue that off-air television stations have abandoned the field. They assert that broadcasters do not want these games. The assertion is simply incorrect. The Commission should not confuse the concept of "abandonment" with the simple fact that, because of natural economic constraints, local stations are simply being outbid for rights fees or end up buying a smaller package of games than they might otherwise want. Moreover, we are not necessarily dealing with "free market" transactions. Major League Baseball is a government sanctioned monopoly. The major college football conferences have significant market power.

Accordingly, it is incorrect to assume that an increase in the number of games on pay subscription channels does not provide *per se* evidence of migration. The Commission's previous conclusion in this regard ignores the fundamental economic dynamics of sports rights bidding. A superior approach would be to assume that in the absence of pay sports channels more games would be appearing on free, off-air television. Thus, even if there has been a slight increase in the number of games appearing on off-air television over the years, one may assume that this number would be even higher in the absence of pay cable sports channels.

Such a presumption is also supported by basic public policy considerations. Every game that appears on a basic cable channel, means that approximately 40 percent of the American public will be denied access to the game. When games appear on pay cable channels

and pay-per-view services the number of fans disenfranchised escalates.

As INTV has stated previously in this proceeding, overall access to games by the public should be the Commission's overriding concern. America's sports fans have paid dearly to have teams located in their towns. Tax breaks, bonds, and infrastructure improvements have all been paid for by the public. On the collegiate level, almost every school in the country, public and private, receive public money in some form. These fans should not have to pay twice.

While INTV remains concerned about a number of sports, we will focus our attention in these comments on two of the most critical areas, Major League Baseball and college football.

II. MAJOR LEAGUE BASEBALL

As the FCC's Interim Report indicates, among broadcasters, Independent stations are the predominant source of televised local baseball. Independent stations have a strong interest in the developments surrounding baseball rights.

A. ESPN's Preclusive Contract with MLB

Up to this point the Commission has confined its analysis of preclusive contracts to college football. However, perhaps the most egregious case of "generic time-block" preclusive contracts appears in the contract between Major League Baseball and ESPN.

Like its predecessor, the new ESPN contract with Major League Baseball provides for exclusive rights to cablecast games on Wednesday and Sunday nights.

On Wednesday nights, ESPN will cablecast a doubleheader (two games) amounting to 50 games over the course of the season. Television stations are prohibited from contracting directly with local teams and broadcasting any games on Wednesday nights. Thus, 40 percent of the American public is automatically denied access to baseball on Wednesday nights, even though these games are being played. (There are 28 teams in major league baseball which means there are on average 14 games being played on any particular day during the season.)

These provisions are nothing more than a mechanism to artificially restrict the supply of televised baseball games. As applied to broadcast television, the Wednesday night restriction is especially egregious, given the fact that the exclusivity provision does not apply to regional pay cable channels. For example, if ESPN decides to cablecast the Red Sox vs. Yankees game and a S.F. Giants v. San Diego Padres game, regional pay cable networks may broadcast other games that are being played. Thus, if you want to see Baltimore vs. Cleveland on a Wednesday night, you cannot see it in Washington on WDCA-TV Channel 20 or WFTY-TV Channel 50. You will only see the Baltimore games on Home Team Sports, the regional pay cable channel.²

²In fact ESPN's "carry-back" arrangement takes special care to avoid delivering a game to cable systems in those markets and in surrounding communities where a regional sports channel has the

Similar exclusivity provisions apply on Sunday nights in which ESPN will cablecast 25 games throughout the season. In this situation there is blanket exclusivity. No other media entity, be it a television station or pay cable network may telecast a game on Sunday nights.³

INTV believes that ESPN's arrangement with Major League Baseball is nothing more than an attempt to limit output to enhance its competitive position. Indeed, the history of ESPN's contractual relationship with Major League Baseball proves the point.

Under the previous agreement, ESPN also had the rights to cablecast games on Monday, Tuesday and Friday nights. However, these were non-exclusive rights and local television stations could broadcast local games on these nights. However, ESPN found that the ratings for these nights were extremely low due to head to head competition with local television stations that were broadcasting local games.

Confronted with direct competition from local television stations, the solution for ESPN and Major League Baseball was to continue the practice of limiting output, by preventing local teams from contracting with local television stations, on Wednesday and Sunday nights. Restricting competition enhanced the value of

rights to telecast the game.

³Games played earlier on Sunday may be covered by a local broadcast station or regional cable sports network. However, the audience levels are much higher on Sunday nights. Accordingly, a station broadcasting a Sunday afternoon game is competing to attract an audience from a smaller pool of potential viewers.

ESPN's Wednesday and Sunday night cablecasts. Viewership, hence advertising revenues are increased.

INTV recognizes that Major League Baseball is immune from the antitrust laws. Nevertheless, the Commission under the public interest standard of the Communications Act should take a critical look at this arrangement. ESPN's decision to jettison games on those nights without time period exclusivity demonstrates that the American public, when given a choice, would prefer to see its local team play on off-air television. ESPN's and Major League Baseball's decision to restrict the coverage of local games, in order to enhance the value of the ESPN package, is simply contrary to any notion of the public interest.

Importantly, the exclusivity arrangement between Major League Baseball and ESPN cannot be compared to other types of exclusivity arrangements typically found in the broadcast and cable industries, where exclusive rights are common. Exclusive rights are generally based on specific programs. For example, a cable network or broadcast station may secure the exclusive rights to "Cosby" or to broadcast the local baseball game. Accordingly, INTV believes that if ESPN secures the rights to specific baseball games, it should have the exclusive right to cablecast only these games. However, ESPN's preclusive exclusivity arrangements prevent the broadcast of any other game, even though ESPN is not covering the game and local stations are ready, willing and able to provide coverage. This situation is analogous to a television station having the

power to prevent any sitcom from being aired during prime time because it has secured the rights to "Cosby."

INTV recognizes that Major League Baseball has a long history of granting generic time block exclusivity. Indeed, such rights were granted to the networks on weekend afternoons for the "Game of the Week" broadcasts. However, these arrangements left open the possibility of a local team contracting with a local station for evening games on the weekend. Moreover, the historic relationship between Major League Baseball and the networks was premised on the public policy rationale that off-air network coverage provided baseball to all Americans, especially in areas with no local teams. ESPN can proffer no such public interest rationale. As a cable network, exclusive cablecasts automatically eliminate approximately 40 percent of the American public.

B. ABC/NBC's New Contract with Major League Baseball

Major League Baseball, through its new partnership with ABC and NBC has dramatically altered network coverage. Nationwide broadcast coverage of regular season baseball games is gone. National coverage is the sole dominion of ESPN. Broadcast network coverage will now be "regionalized."⁴

⁴Under the new network arrangement, divisional play-offs and the league championship series will also be subject to regional broadcasts. Hence, with the exception of the World Series, there will be no national coverage of the play-offs. In fact, the divisional and league championship games will be scheduled simultaneously, thereby preventing live coverage.

INTV would caution the Commission that such a result sets the

Under the new network contract, ABC and NBC will each broadcast six nights of "regional" games in prime time beginning after the All Star Game. ABC will broadcast its first game on Saturday evening July 16, followed by two Monday night games and then three more on Saturday nights. NBC then steps up to the plate with six Friday night games. ABC and NBC have the exclusive rights to all Major League Baseball games played on these dates.

The key policy consideration with respect to this portion of the contract is whether ABC and NBC will actually broadcast all the games that are played. If they do not, then this arrangement will work much like the ESPN arrangement and prevent local stations from broadcasting games that are not otherwise aired. To their credit, ABC and NBC are planning to broadcast all 14 games played on their respective nights. As a result, all Americans will be able to see their local teams play.

To the extent the new network contract expands coverage on broadcast television, it will provide greater opportunities for all Americans to access baseball. The key will be the nature and scope of the "regional" coverage. Nevertheless, as discussed below, the

stage for pay-per-view playoff games. The play-offs are the most watched and the most valuable in games in economic terms. In fact the play-offs along with the world series, are the real prize in any network baseball contract. Given the new arrangement, one can easily see that the networks will eventually offer out of region play-off games to the public on a pay-per-view basis. There is precedent for such a policy. After securing the rights to the Big-10, PAC-10 and CFA, ABC decided to provide cable subscribers with "out-of-market" college football games on a pay-per-view basis.

league's decision to move away from a "national" telecast and towards "regional" (local) telecasts will make it more difficult for local stations to contract directly with local teams.

What the new network arrangement does demonstrate is that the public, hence the economic market, is directed towards local teams being viewed in their home markets in prime time. A single nationally distributed game of the week could not survive in the marketplace. From INTV's perspective this provides additional evidence that ESPN's preclusive windows on Wednesday and Sunday nights is nothing more than an artificial limit on supply. The new network arrangement amply demonstrates that the most efficient market for regular season baseball is local coverage of local games.

C. Undermining Local Coverage

There is no question that fans prefer to see their local teams play. Both the ESPN and network contracts illustrate the league's attempt to influence local rights. ESPN's arrangement restricts local coverage. The league's new contract with the networks puts the networks in the business of distributing local games.

For the first half of the season, local stations lose two prime time evenings, Wednesday and Sunday, due to the ESPN contract. After the All Star break, local stations will be prohibited from broadcasting an additional night (Mondays or Saturdays during ABC's coverage and Fridays during NBC's coverage). In other words, local stations will be prohibited from broadcasting

three out of seven nights during the last half of the season. The problem becomes worse given the fact that many teams are traveling or have the day off on days when a local television station would be permitted to broadcast a game.⁵

Local stations are being squeezed out of baseball coverage. With three of the seven nights blocked out, it is becoming increasingly difficult for a local station to produce and broadcast baseball. A significant portion of a local station's games are "away" games. However, because a station cannot broadcast games on three nights per week, it is becoming increasingly expensive to cover an entire road trip. Looking at the schedule, most stations will be blocked from carrying at least one game. It becomes uneconomic to send announcers and production crews on the road simply to cover one or two games.

It has become readily apparent that local television stations are quickly becoming the last in the pecking order when it comes to securing rights to baseball. Major League Baseball, with its antitrust exemption, has given ESPN a preferred position, permitting it to block coverage of local games by television stations. The new arrangement with ABC and NBC has permitted the networks to take local games away from local teams and local broadcasters for prime time exhibition. Finally, at the local level, regional pay cable channels now occupy a dominant role in

⁵For example, prior to the All Star Break, the Chicago White Sox do not play on six Mondays and five Thursdays. After the All Star game the White Sox do not play on 4 Mondays and two Thursdays. Chicago Tribune, March 29, 1994, Section 4 page 8.

the coverage of local games. Taken together, these factors will significantly reduce the value of a broadcaster's local rights package.

Given these difficulties, local stations may reduce the amount of coverage or eliminate it altogether. Of course, some will argue that local stations simply don't want baseball games. However, Major League Baseball's rights arrangements are creating an environment where it is more expensive to produce and broadcast games while at the same time diminishing the value of local off-air broadcasts. When coupled with the economic pressures of a single revenue stream and increasing rights fees, it is no wonder that games on local off-air television stations may diminish in the future.

**D. Statistical Analysis of Baseball Games
Demonstrates that Migration is Occurring.**

In previous comments filed in this proceeding, Major League Baseball and the cable interests were quick to point out that the number of games appearing on local television has increased since 1980. According to Major League Baseball, 1382 games were broadcast in 1980 and 1,705 games were broadcast in 1993, representing an increase of 313 games. INTV believes these data mask the true migration of baseball away from local over-the-air television. The following analysis is based on data supplied by Major League Baseball during this proceeding.⁶

⁶See Exhibit A.

First, 32 of the 313 game increase is accounted for by increases in the broadcast of Chicago Cubs and Atlanta Braves games. In both cases there is common ownership between the team and the television station. One would not expect migration to occur in these situations.

Team	Games Broadcast		Increase(^) or Decrease(-)
	<u>1980</u>	<u>1993</u>	
Atlanta	96	125	29(^)
Chi. Cubs	137	140	3(^)

Second, 124 of the 313 game increase occurred in markets where there was no cable sports channel in 1993 to siphon games away.

Team	Games Broadcast		Increase(^) or Decrease(-)
	<u>1980</u>	<u>1993</u>	
St. Louis	38	66	38(^)
Kan. City	42	62	20(^)
Milwaukee	39	65	26(^)
Seattle	21	39	10(^)

Third, 79 of the 313 game increase occurred in markets where the increase in games broadcast on off-air television was associated with a significant decline in games on cable sports channels.

Team	Games Broadcast		Inc.(^) or Dec.(-)	Games Cablecast		Inc.(^) or Dec.(-)
	<u>1980</u>	<u>1993</u>		<u>1984</u>	<u>1993</u>	
Cin.	41	53	12(^)	52	35	17(-)
Houst.	66	67	1(^)	79	55	24(-)
Tx. Rang.	24	90	66(^)	100	58	42(-)

Finally, 35 of the 313 game increase occurred in markets with very limited cable exposure.

Team	Games Broadcast		Inc.(^) or Dec.(-)	Games Cablecast		Inc.(^) or Dec.(-)
	1980	1993		1984	1993	
Dodgers	32	46	14(^)	15	0 ⁷	15(-)
Angels	29	50	21(^)	17	20	3(^)

Accordingly, while the cable interests and Major League Baseball cite to a 313 game increase in broadcast television exhibition since 1980, 270 of these games (86% of the increase) occurred in markets with little or no cable sports exposure or in markets where cable exposure has declined. Certainly, national statistics reporting an increase in games on over-the-air television do not prove that sports migration is not taking place.

Furthermore, the hypothesis -- that cable is not siphoning because it merely supplements games that otherwise would not be aired on local off-air television -- is disproved in those markets where there has been a significant increase in cable exposure.

Team	Games Broadcast		Inc.(^) or Dec.(-)	Games Cablecast		Inc.(^) or Dec.(-)
	1980	1993		1984	1993	
NY Mets	88	75	13(-)	60	75	15(^)
Boston	92	75	17(-)	87	81	6(-)
Chi. Sox	114	48	66(-)	102	110	8(^)
Cleve.	69	60	9(-)	25	45	20(^)
NY Yank	100	50	50(-)	44	108	64(^)
Balt.	52	50	2(-)	80	85	5(^)

⁷While there was no cable sports channel contract, some Dodger games may have appeared on Dodgervision, a pay-per-view service.

Snapshots of broadcast television exposures in 1980 and 1993 and cable exhibitions of 1984 and 1993 do not provide a complete picture. In fact, the direct relationship between cable sports channels and reduced games on off-air television is dramatically demonstrated in the history of several markets.

For example, Major League Baseball reports that there were 39 Milwaukee Brewer Games exhibited on broadcast television in 1980 and 30 games exhibited in 1984. However, these statistics do not reveal the significant decline in Brewer's games that occurred when a cable sports channel acquired the rights to games in 1984. Brewers games on local television were increasing during the 1980 to 1983 period. Broadcasting reported that in 1983 the local television station secured the rights to broadcast 60 games. Again, according to Broadcasting, the number of games available to broadcast television in 1984 dropped to 38 which was the same year that a cable sports channel acquired the rights to cablecast 67 games. However, the cable venture apparently failed and did not cablecast any games in 1985. According to statistics reported in Broadcasting, the number of games made available to broadcast television in 1985 increased immediately to 58 in the absence of the cable channel.

In Boston, Major League Baseball reported that there were 92 Red Sox games broadcast on television in 1980. (Broadcasting reported 105 games.) Nevertheless, in 1984, which was the first year the New England Sports Network (NESN) began operation with 87 games, the number of games available on off-air television declined

to 69. (Broadcasting reported that 70 games were available for broadcasting in 1984 and that NESN cablecasted 90 games that season.)

In New York, Major League Baseball reports that 100 Yankees games were broadcast in 1980, 96 games in 1984 and 50 games in 1993. At the same time, 44 games appeared on cable in 1984 and 108 games in 1993. What the statistics don't explain is that the shift in games occurred between the 1986 and 1987 seasons. According to Broadcasting, there were 100 games on off-air television in 1986 and 40 games on cable in 1986. In 1987, the first year of the new arrangement between Mr. Steinbrenner and the SportsChannel, the situation reversed itself. Cable telecasted 100 games and off-air games were reduced to 50.

In fact, when one examines the record over the past fourteen years, increases in both the number of games appearing on broadcast television and the number of games appearing on regional cable sports channels occurs in only 6 of the 28 baseball markets.

Team	Games		Inc.(^) or Dec.(-)	Games		Inc.(^) or Dec.(-)
	Broadcast 1980	1993		Cablecast 1984	1993	
Phil.	73	85	12(^)	30	68	38(^)
Pitt.	44	53	9(^)	0	59	59(^)
Sn. Dieg.	37	48	11(^)	40	50	10(^)
San Fran.	33	47	14(^)	0	55	55(^)
Oak. A's	29	50	21(^)	0	59	59(^)
Minn.	49	61	12(^)	50	73	23(^)

On balance, the presence of a cable sports channel has been associated with a decline in games in 20 out of the 28 baseball markets. This relationship also can be seen in the license

agreements for the Florida Marlins and the Colorado Rockies. In 1994, the Marlins are scheduled to appear 50 times on over-the-air television and 63 times on cable's Sunshine network. On the other hand, the Rockies, which have no cable contract, are scheduled to appear 80 times on over-the-air television.

An overall assessment of baseball exhibitions from 1980 to 1993 simply does not support the hypothesis that games on regional cable sports channels are merely supplementing games that appear on over-the-air television. In the vast majority of local markets, this has not been the case. As a result, the Commission's conclusion that there has been no migration in baseball is simply not correct and the findings of its Interim Report should be revised accordingly.

E. The Future Of Baseball On Local Off-Air Television

The future does not look bright for professional baseball on local over-the-air television. Local rights fees continue to escalate, reaching \$375 million in 1994, \$22 million higher than in 1993.⁸ Overall advertising revenue, the life blood of sports on television, may not keep pace.

At the same time, Major League Baseball's new contracts with ESPN and the networks will continue to infringe on the ability of a local station to contract with local teams for off-air exhibition. ESPN's Wednesday and Sunday night exclusivity have

⁸Broadcasting and Cable, March 14, 1993 at 35.

taken two prime time slots away from local stations. ABC's and NBC's venture into "regionalized" prime time baseball makes scheduling games more difficult and provides additional competitive pressure on stations in their local markets. At the local level, regional cable sports channels will continue to play an ever increasing role in the distribution of local games, further reducing the unique value of a local station's rights fees.

The net result is that local stations will find themselves squeezed out of the market for local baseball rights. This is already happening. KDKA, which owned local rights to the Pirates for years, no longer owns the local rights. Instead, KBL Sports, a cable sports channel purchased the rights to all of the Pirates games. The result, the number of games appearing on KDKA will be reduced from 53 in 1993 to 35 in 1994.⁹ WLWT found itself in a position where it could no longer afford to pay as much as it had in the past for the local broadcast rights of the Cincinnati Reds.¹⁰

This situation is not unique. There is a discernable trend in which regional cable sports channels are securing all the local television rights. The most notable situation involves the New York Yankees where the Madison Square Garden network owns all the television rights.

In Baltimore, Group W, which owns WJZ-TV Channel 13 in Baltimore and Home Team Sports, a regional sports channel, has secured the local rights to all of the Orioles games, outbidding

⁹Id.

¹⁰Id.

its broadcast competitors. Fortunately, Home Team Sports is purchasing time on several stations which has increased the number of games available on off-air television. The rights to Minnesota Twins games are held by Midwest Communications which owns WCCO-TV and a regional sports channel. (Both of which are owned by CBS.)

From a public policy perspective, this is a dangerous situation. As the situation with the New York Yankees, Madison Square Garden Network and WPIX demonstrated, there is a very real danger that a cable sports network may decide not to place games on off-air television. In each situation there will be disputes over whether the regional sports channel is withholding games or whether the broadcast station is being unreasonable. The fact remains, however, that local stations will no longer be in a position to control whether games appear on off-air television. That right will belong to the regional sports network which is a direct competitor to a local station.

As in New York, political pressure will have to be exerted to insure that games remain on off-air television. One can expect to see this scenario repeated again and again, as local stations are outbid for the rights to local games.

INTV believes that the Commission, consistent with its obligation under the Communications Act, should take steps to prevent the continued erosion of the position of local stations with respect to local broadcasts of professional baseball. We recommend the following solutions.

- At the very least, the Commission should continue to monitor this issue closely. Accordingly, it

should recommend to Congress that this docket remain open with annual reports on the status of sports on over-the-air television.

- Regulations should be enacted which prevent cable networks from entering into preclusive contracts with Major League Baseball.
- The Commission, or the Congress may want to consider regulations which would require that a certain percentage of games remain available on over-the-air television.

INTV recognizes that the problem of sports migration is extremely complex. There are no easy solutions. However, the Commission simply cannot ignore the potential harm to the American public if fans are no longer able to access their local team on over-the-air television. The Commission cannot disenfranchise 35-40 percent of the American public.

III. COLLEGE FOOTBALL AND PRECLUSIVE CONTRACTS

During the initial round of comments in this proceeding, INTV provided specific examples of college football games that were not being televised due to the preclusive nature of ABC's contracts with the CFA, PAC-10 and Big-10.¹¹ We also observed that ESPN's and other cable sports channels' preclusive contracts effectively prohibited local stations from contracting with local universities for the right to broadcast college football.

At bottom, the preclusive contractual relationships that exist in college football are justified by ABC on the following grounds.

¹¹INTV Comments at 6 -17, INTV Reply Comments at 9-23.